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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91196845
Party	Defendant Boi Na Braza Inc.
Correspondence Address	JUSTIN S COHEN THOMPSON & KNIGHT LLP 1722 ROUTH ST, SUITE 1500 DALLAS, TX 75201-2532 UNITED STATES justin.cohen@tklaw.com
Submission	Motion to Compel Discovery
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Date	12/05/2011
Attachments	Boi Na Braza Motion to Compel.pdf ( 33 pages )(906742 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TERRA SUL CORPORATION A/K/A  
Churrascaria Boi Na Brasa

Opposer,

vs.

OPPOSITION NO. 91196845

Boi Na Braza, Inc.,

Applicant.

APPLICANT'S MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS AND INTERROGATORY ANSWERS

Applicant, Boi Na Braza, Inc., files its Motion to Compel Production of Documents and Interrogatory Answers and states:

1. On November 15, 2011, Boi Na Braza served its First Set of Discovery on Opposer.<sup>1</sup> These requests were received by Opposer and included Admission Requests, Interrogatories, and Requests for Production of Documents.
2. On November 29, 2011, Opposer informed Boi Na Braza that it would not be responding to Boi Na Braza's discovery requests. Opposer provided no legal basis for refusing, but simply refused because Boi Na Braza did not file its initial disclosures by the Board's deadline.<sup>2</sup>
3. On November 29, 2011, Boi Na Braza made a good faith effort to resolve the issue by asking Opposer to reconsider their position.<sup>3</sup> Specifically, Boi Na Braza informed Opposer that although its initial disclosures were not served by the Board's deadline,

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<sup>1</sup> See Exhibit A.

<sup>2</sup> See Exhibit B.

<sup>3</sup> See Exhibit C.

Boi Na Braza's initial disclosures were served before serving its First Set of Discovery to Opposer, as required under 37 C.F.R. 2.120(a) (3).

4. If Opposer had been genuinely concerned about receiving Boi Na Braza's initial disclosures sooner, Opposer could have simply inquired about their status or filed a motion to compel production of Boi Na Braza's initial disclosures.
5. Opposer cannot claim to be prejudiced by any late filing because the parties were recently engaged in a cancellation proceeding involving the BOI NA BRAZA mark, which was finalized before Boi Na Braza filed the concurrent use application that is at issue in this opposition proceeding. Boi Na Braza's initial disclosures identified the same people as were identified and involved in the prior cancellation proceeding.
6. As of this filing, Boi Na Braza has not received any response from Opposer.

Given the above, Applicant Boi Na Braza respectfully requests that the Board order Opposer to respond to Boi Na Braza's discovery requests. Further, Boi Na Braza requests that the current proceeding be suspended pending resolution of this motion to compel.

Dated: December 5, 2011

Respectfully submitted,

/s/ Justin S. Cohen

Justin S. Cohen  
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ATTORNEYS FOR APPLICANT  
BOI NA BRAZA, INC.

TERRA SUL CORPORATION A/K/A  
Churrascaria Boi Na Brasa

Opposer,

vs.

OPPOSITION NO. 91196845

Boi Na Brasa, Inc.,

Applicant.

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**CERTIFICATE OF SERVICE**

I hereby certify that this motion is being served on Opposer through its attorney of record, Eamon J. Wall, via First Class Mail, postage prepaid, on this 5<sup>th</sup> day of December, 2011, at the following address:

Eamon J. Wall  
Wall & Tong, LLP  
25 James Way  
Eatontown, New Jersey 07724

/s/ Justin S. Cohen  
Justin S. Cohen

# EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Pending Application Serial No. 77/779,339

Application Filing Date: July 13, 2009

Publication Date: June 22, 2010

Terra Sul Corporation a/k/a	§	
Churrascaria Boi Na Brasa,	§	
	§	
Opposer,	§	
	§	
vs.	§	Opposition No. 91196845
	§	
Boi Na Braza, Inc.,	§	
	§	
Applicant.	§	

**APPLICANT'S FIRST SET OF DISCOVERY TO OPPOSER**

TO: Terra Sul Corporation a/k/a Churrascaria Boi Na Brasa, Opposer, by and through its attorney of record, Eamon J. Wall, Wall & Tong, LLP, 25 James Way, Eatontown, New Jersey 07724.

In accordance with Federal Rules of Civil Procedure 26, 33, 34, and 36, Applicant serves the following interrogatories, requests for admission, and requests for the production of documents and things. Applicant requests that Opposer serve its responses to these discovery requests no later than thirty (30) days after service. Applicant requests that Opposer supplement its responses as required by the Federal Rules of Civil Procedure.

**I.**  
**DEFINITIONS**

1. "Applicant" refers to Applicant, Boi Na Braza, Inc. ("Boi Na Braza"), its predecessors in interest, its employees, officers, representatives, agents, servants, associates, attorneys, licensees, customers, and other persons otherwise associated or acting in concert with Applicant.

2. “Applicant’s Mark(s)” include any marks owned by or assigned to Boi Na Braza and used to identify its services, including, but not limited to, BOI NA BRAZA & Design, Registration No. 2,666,968.
3. “Applicant’s Application” means Application Serial No. 77/779,339, filed July 13, 2009, and published June 22, 2010.
4. “Opposer” refers to Opposer, Terra Sul Corporation a/k/a Churrascaria Boi Na Brasa (“Terra Sul”), and to its predecessors in interest, affiliates, representative, employees, officers, servants, and agents, and to all other persons acting on its behalf or under its direction or control, including its representatives and attorneys, or any person acting on its behalf.
5. “Opposer’s Mark(s)” means the marks “BOI NA BRASA,” “CHURRASCARIA BOI NA BRASA,” or any other variation that includes the term “BOI NA BRASA.”
6. “Opposer’s Goods and Services” means any and all of the goods and/or services with which Opposer uses the marks “BOI NA BRASA,” “CHURRASCARIA BOI NA BRASA,” or any other variation that includes the term “BOI NA BRASA.”
7. “Opposition Proceeding” means the present opposition proceeding, Opposition No. 91196845.
8. “Person” or “persons” means all entities, including, but not limited to, all natural persons, firms, partnerships, associations, joint ventures, corporations, single proprietorships, companies, proprietorships, business trusts, banking institutions, unincorporated organizations, entities recognized by a body politic and any other business or legal entities including governmental bodies and agencies.
9. “Identify” when used with respect to natural persons means to provide sufficient information, including home and business addresses and telephone numbers, such that a

subpoena may be issued and served on that person. “Identify” when used with respect to all other persons means to provide sufficient information, including addresses and telephone numbers and agents for service of process, that a subpoena may be issued and served on that person. “Identify,” when used in reference to a document, means state:

- the nature of the document (e.g., contract, letter, tape, recording, ledger sheet, memorandum, voucher, lab notebook, etc.);
- its title, if any;
- the substance of its contents;
- the date and place of its preparation;
- If it is in the nature of a communication: the date and place it was sent; the date and place it was received; the identity (as defined above) of the sender; the identity (as defined above) of the receiver; and the identity (as defined above) of each person for whom the sender or receiver acted or purported to act;
- the identity (as defined above) of all persons signing it, preparing or making it, or participating in or present at its preparation, making, or signing;
- the identity (as defined above) of all persons having custody of the document and if the present location of the document is unknown, the last known location of the document and any available information as to the disposition of the document or its whereabouts.

10. The term “document” is used in a comprehensive sense and shall include all manner of documents as defined in Federal Rule of Civil Procedure 34. To the extent that a document



differs from other copies or originals of the same by reason of notations, comments, markings or other differences, said document shall be deemed a separate document.

11. The singular shall include the plural, and the plural, the singular, and the past tense shall include the present and future, the present shall include the past and future, and the future shall include the past and present.

12. Each answer shall include all information known or available to Opposer. If the information is not sufficient to answer any interrogatory or admission request, provide the information known or available, state what portion of the interrogatory or admission request cannot be answered, and identify all documents that might contain, and all persons who might have, knowledge or information relevant to the answer sought. If information in an answer to any interrogatory or admission request is available, but incomplete, indicate the available information and state when completion of such further information as requested is expected. If Opposer cannot complete a response until discovery has been completed, Opposer is requested to so indicate and to respond to the best of its ability in view of the present state of discovery.

13. If any answer is on information or belief, in whole or in part, so state and identify each person, document or oral communication that has provided a factual basis for such information or belief. Where exact data cannot be furnished, estimated data must be supplied and be identified as such.

14. If objection is made to any part of a particular interrogatory or admission request, that part shall be specified (together with the grounds for the objection), and any other portion of the interrogatory or admission request to which no objection is made shall be answered. If Opposer objects to any interrogatory or admission request on the grounds of privilege, specify the specific privilege upon which such objection is based, state the portion of the interrogatory or admission

request to which the privilege is claimed to apply, provide sufficient information to permit an evaluation of the propriety of the claim of privilege, and provide all information responsive to the interrogatory or admission request that does not fall within the claim of privilege.

15. If Opposer asserts attorney-client privilege or work-product immunity, or both, as to any document for which production or identification is requested, provide an identification of each such document in writing, such identification to include: the nature of the document, the author, the sender, the recipient, the recipient of all copies, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list associated with the document, a summary statement of the subject matter of the document in sufficient detail to permit the Board to reach a determination in the event of a motion under Federal Rule of Civil Procedure 37, and an indication of the basis for assertion of privilege or the like.

16. These discovery requests seek information as of the date of serving the answers and responses, and shall be deemed continuing so as to require further and supplemental responses in accordance with Federal Rule of Civil Procedure 26(e).

17. If Opposer invokes Federal Rule of Civil Procedure 33(d) (option to produce business records), specify, by category and location, the records from which the answer to the interrogatory may be derived or ascertained.

## II. INSTRUCTIONS

1. If any documents or things requested were at one time in existence, but are no longer in existence, then so state, specifying for each document or thing:

A. The type of document or thing;

- B. The types of information contained thereon;
  - C. The date upon which it ceased to exist;
  - D. The circumstances under which it ceased to exist;
  - E. The identity of all persons having knowledge of the circumstances under which it ceased to exist; and
  - F. The identity of all persons having or who had knowledge of the contents thereof.
2. Documents attached to each other should not be separated.
3. If you exercise your option to produce your business records pursuant to Rule 33(d) of the Federal Rules of Civil Procedure in response to an interrogatory, you should specify with particularity the location and identity of the business records where the information requested is found.
4. The period of time covered by these discovery requests is without limitation, unless otherwise specified.
5. As required by Rule 26(e) of the Federal Rules of Civil Procedure, you are requested to supplement your answers or other responses to these interrogatories and admissions, particularly with respect to any interrogatories which are addressed to the identity and location of documents concerning discoverable information or of persons having knowledge of discoverable matters.
6. The answers to the interrogatories among these discovery requests must be provided under oath pursuant to Rule 33(b)(1) of the Federal Rules of Civil Procedure.
7. If you claim privilege with respect to any of the discovery requests contained herein, Local Civil Rule 26.2 shall govern how such privilege is to be asserted.

### III. ADMISSION REQUESTS

Pursuant to Rule 2.120 of the Trademark Rules of Practice of the Patent and Trademark Office and Rule 36 of the Federal Rules of Civil Procedure, Applicant, Boi Na Braza, directs the following admission requests to Opposer, Terra Sul, to be answered within thirty (30) days:

1. Admit that prior to July 1, 1999, Opposer did not operate its business as a Brazilian-style churrascarian restaurant.
2. Admit that Opposer, through its counsel, provided to Applicant on January 23, 2007 a certificate of incorporation dated March 28, 1996 for the corporation CHURRASCARIA BOI NA BRASA CORP. in order to substantiate its claims of business since that time.
3. Admit that BOI NA BRASA originally operated as Adams Centre Pizzeria.
4. Admit that the only CHURRASCARIA BOI NA BRASA restaurants are located in New Jersey.
5. Admit that, apart from CHURRASCARIA BOI NA BRASA, Opposer does not claim to have used any other mark incorporating the term BOI NA BRASA prior to July 1, 1999.
6. Admit that Terra Sul Corp. is the parent entity of CHURRASCARIA BOI NA BRASA.
7. Admit that Terra Sul Corp. was incorporated on January 18, 1999 and filed and recorded with the Division of Commercial Recording of the New Jersey Department of State on January 19, 1999.
8. Admit that Opposer does not operate any CHURRASCARIA BOI NA BRASA restaurants in New York.
9. Admit that Opposer does not provide any restaurant or bar services in New York.
10. Admit that Opposer does not advertise restaurant or bar services in New York.

IV.  
INTERROGATORIES

Pursuant to Federal Rule of Civil Procedure 33 and Trademark Rule 2.120, Applicant hereby requests that Opposer answer the following interrogatories under oath within thirty (30) days of service hereof, or within such other time as may be permitted by the Trademark Rules of Practice.

INTERROGATORY NO. 1:

Describe in detail all of the facts and circumstances surrounding Opposer's adoption of Opposer's Mark and all the reasons for the adoption of Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 1:

INTERROGATORY NO. 2:

For each matter identified in Interrogatory No. 1 above, identify the person having the most knowledge of same and all documents referring or relating thereto.

RESPONSE TO INTERROGATORY NO. 2:

INTERROGATORY NO. 3:

Identify all persons who had responsibility for, were consulted in connection with, or who otherwise participated in the selection of Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 3:

INTERROGATORY NO. 4:

Identify all persons who have responsibility for the marketing, promotion, or sale of Opposer's goods and services under the Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 4:

INTERROGATORY NO. 5:

Identify when Opposer first learned of Applicant's use of the mark BOI NA BRAZA for any goods or services and describe the details of same.

RESPONSE TO INTERROGATORY NO. 5:

INTERROGATORY NO. 6:

Identify the dates of the first use of Opposer's Mark, and describe the nature and circumstances of such use, including the specific goods and services on which Opposer's Mark were first used.

RESPONSE TO INTERROGATORY NO. 6:

INTERROGATORY NO. 7:

Identify all goods and services previously or presently offered or sold under Opposer's Mark by Opposer or its licensees and the date Opposer or its licensees began selling such goods or services under the Marks.

RESPONSE TO INTERROGATORY NO. 7:

INTERROGATORY NO. 8:

Has Opposer or any other party having the right to use Opposer's Mark ever discontinued using Opposer's Mark? If so, identify any such entity that has discontinued use, the dates it discontinued use of the Marks, and the reasons for discontinuing use of Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 8:

INTERROGATORY NO. 9:

Identify the types of advertising or promotional activities, including but not limited to, catalogs, brochures, websites, publications or other media or advertising means in which Opposer has used Opposer's Mark. Identify a representative sample of each advertisement, promotion, manual, Internet web page, package, label, or other materials used in connection with the sale of Opposer's Goods and Services under Opposer's Mark. For each item, state periods of time when each item was used.

RESPONSE TO INTERROGATORY NO. 9:

INTERROGATORY NO. 10:

Describe how Opposer first became aware of Applicant.

RESPONSE TO INTERROGATORY NO. 10:

INTERROGATORY NO. 11:

Describe the registration of the domain name www.boinabrasa.com, including all parties identified as registrants and/or administrative contacts, the relationship between those parties, the date of registration, and the restaurants identified on the website.

RESPONSE TO INTERROGATORY NO. 11:

INTERROGATORY NO. 12:

Does Opposer have or has Opposer ever had any business relationship with Applicant? If so, describe the dates of such relationship, the nature of the business relationship, and the employees or representatives of Opposer and Applicant who were involved or who are knowledgeable about such relationship.

RESPONSE TO INTERROGATORY NO. 12:

INTERROGATORY NO. 13:

Describe the geographic area (by country and state within the United States) of the past distribution and advertising of the goods and services sold under Opposer's Mark, beginning with the earliest use of Opposer's Mark and proceeding to and including the filing date of Applicant's Registration, including the date of such distribution and advertising in each geographic area, and a description of each geographic area (e.g., state, county, city, municipality, neighborhood, etc.).

RESPONSE TO INTERROGATORY NO. 13:



INTERROGATORY NO. 14:

State the sales by month in dollars and units by Opposer for all goods and services sold under Opposer's Mark in the United States since the date of first sale in the United States and proceeding to and including the filing date of Applicant's Application, and identify all documents referring or relating thereto.

RESPONSE TO INTERROGATORY NO. 14:

INTERROGATORY NO. 15:

State the sales by month in dollars and units by Opposer for all goods and services sold under Opposer's Mark in the state of New York, and identify all documents referring or relating thereto.

RESPONSE TO INTERROGATORY NO. 15:

INTERROGATORY NO. 16:

Identify the circumstances relating to each and every attempt made by Opposer to obtain federal or state trademark or service mark registration for Opposer's Mark in any form.

RESPONSE TO INTERROGATORY NO. 16:

INTERROGATORY NO. 17:

Identify any and all trade names, trademarks, service marks and/or other proprietary designations whether past or present, claimed or utilized by Opposer that include any portion of “BOI NA BRASA.”

RESPONSE TO INTERROGATORY NO. 17:

INTERROGATORY NO. 18:

Identify the first date of use for any and all trade names, trademarks, service marks and/or other proprietary designations listed in Response to Interrogatory No. 17.

RESPONSE TO INTERROGATORY NO. 18:

INTERROGATORY NO. 19:

Describe the geographic area (by country and state within the United States) of the past distribution and advertising of all trade names, trademarks, service marks and/or other proprietary designations listed in Response to Interrogatory No. 16, beginning with the earliest use of Opposer’s Mark and proceeding to and including the filing date of Applicant’s Registration, including the date of such distribution and advertising in each geographic area.

RESPONSE TO INTERROGATORY NO. 19:

INTERROGATORY NO. 20:

Identify each person Opposer intends to call as a witness during the testimony period in this Opposition Proceeding, and for each such witness describe the information such person has

or might have that is relevant to this proceeding, and identify the documents upon which Opposer intends to rely in connection with this Opposition Proceeding.

RESPONSE TO INTERROGATORY NO. 20:

INTERROGATORY NO. 21:

Identify the channels of trade through which each good and service under Opposer's Mark was sold, the manner in which the goods or services under Opposer's Mark was advertised, and identify the consumers of the goods or services under Opposer's Mark beginning with the first use and proceeding to and including the filing date of Applicant's Registration.

RESPONSE TO INTERROGATORY NO. 21:

INTERROGATORY NO. 22:

Identify all of the possible applications and uses for the goods or services sold or to be sold under Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 22:

INTERROGATORY NO. 23:

With respect to any business intended to be conducted but not presently conducted by Opposer using Opposer's Mark, identify all goods and services not already identified by Opposer which Opposer plans to offer in the future under Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 23:

INTERROGATORY NO. 24:

State for each year when Opposer's Mark has been used, advertised, or promoted, the total amount in dollars spent by or on behalf of Opposer on advertising and promoting its goods and services under Opposer's Mark, and its goods and services advertised and/or promoted in conjunction with Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 24:

INTERROGATORY NO. 25:

Identify any instance of actual confusion between Opposer's Mark and Applicant's Marks of which Opposer is aware. With respect to any such instance of confusion, describe the date, the circumstances leading to the confusion, and the parties allegedly confused.

RESPONSE TO INTERROGATORY NO. 25:

INTERROGATORY NO. 26:

Identify any instance in which any member of the public has inquired whether there is any relationship between Opposer or its goods and services and Boi Na Braza, or any of its goods and services.

RESPONSE TO INTERROGATORY NO. 26:

INTERROGATORY NO. 27:

Describe in detail all of the facts and circumstances surrounding Opposer's response to any instance of actual confusion or inquiry by any member of the public regarding any relationship between Opposer and its goods and services and Applicant or any of its goods or services.

RESPONSE TO INTERROGATORY NO. 27:

INTERROGATORY NO. 28:

Identify every person who was approached with such an instance of actual confusion or approached by any member of the public inquiring as to whether there was any relationship between Opposer and its goods and services and Boi Na Braza or any of its goods or services.

RESPONSE TO INTERROGATORY NO. 28:

INTERROGATORY NO. 29:

Identify every person who prepared, assisted in the preparation of, or provided information for the answers to these Interrogatories.

RESPONSE TO INTERROGATORY NO. 29:

INTERROGATORY NO. 30:

Has Opposer attempted to register Opposer's Mark or any variation thereof in any country other than the United States? If so, identify each application filed by Opposer to register Opposer's Mark or any variation thereof by serial number, country, filing date, and indicate its status.

RESPONSE TO INTERROGATORY NO. 30:

INTERROGATORY NO. 31:

If you denied any of Applicant's Admission Requests, for each Request denied, state in detail all facts that form the basis of the denial.

RESPONSE TO INTERROGATORY NO. 31:

INTERROGATORY NO. 32:

Identify any period of time when Opposer's goods or services marketed and sold under its Marks were in any way different than they are currently. For any differences in the goods and services, identify the date that such change to the goods and services was made.

RESPONSE TO INTERROGATORY NO. 32:

INTERROGATORY NO. 33:

Identify the basis for your claims that BOI NA BRAZA so resembles Boi Na Brasa as to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trade Mark Act.

RESPONSE TO INTERROGATORY NO. 33:

INTERROGATORY NO. 34:

Identify the basis of your claims that BOI NA BRAZA is merely descriptive.

RESPONSE TO INTERROGATORY NO. 34:

INTERROGATORY NO. 35:

Identify the basis for your claims that BOI NA BRAZA is deceptively misdescriptive.

RESPONSE TO INTERROGATORY NO. 35:

INTERROGATORY NO. 36:

For each Admission Request that you did not unequivocally admit, explain the basis for your response.

RESPONSE TO INTERROGATORY NO. 36:

INTERROGATORY NO. 37:

Identify all goods and services previously or presently offered or sold under Opposer's Mark by Opposer or its licensees in the state of New York, including the date Opposer or its licensees began selling such goods or services under the Marks.

RESPONSE TO INTERROGATORY NO. 37:

INTERROGATORY NO. 38:

Identify all advertising of bar and/or restaurant services in connection with Opposer's Mark outside of New Jersey, including the total amount in dollars spent by or on behalf of Opposer on advertising and promoting its bar and/or restaurant services under Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 38:

V.

DOCUMENT REQUESTS

Pursuant to Rule 2.120 of the Trademark Rules of Practice of the Patent and Trademark Office and Rule 34 of the Federal Rules of Civil Procedure, Applicant requests production of the following documents and things within thirty (30) days of the date hereof:

1. All documents and things that are identified in response to for which identification is sought in Applicant's First Set of Interrogatories to Opposer.
2. All documents and things used to respond to Applicant's First Set of Discovery to Opposer.



3. All documents and things that relate to any advertisement of Opposer's Mark prior to the filing date of Applicant's Application.
4. All documents and things that relate to any change in the type of good or service offered under Opposer's Mark since the inception of Opposer's business.
5. All documents and things relating to the selection and adoption of Opposer's Mark.
6. All documents and things relating to the first use of Opposer's Mark in connection with Opposer's goods and services.
7. All documents and things that relate to any state or federal applications to register any trademark, service mark, or trade name that includes Opposer's Mark or any similar mark.
8. A sample of each different document or thing bearing Opposer's Mark that is or has been advertised, offered for sale, sold, or distributed by Opposer, including but not limited to tags and labels, advertisements in publications or other materials such as menus and brochures.
9. Representative specimens of catalogs, mailing pieces, newspaper or magazine advertising, brochures, handbills, flyers, franchise offerings, web pages, on-line ads, menus or other pieces of descriptive or promotional literature, directed at potential or actual customers, and relating to or describing the goods and services offered by Opposer under Opposer's Mark prior to the filing date of Applicant's Registration.
10. All documents and things identifying the present customer lists of the Opposer with respect to each of the goods sold and services rendered under Opposer's Mark.
11. All documents and things that relate to the dollar and unit volume of Opposer's sales of goods or services sold under Opposer's Mark, for each year from the date of first use to the filing date of Applicant's Registration.

12. All documents and things that relate to Opposer's advertising expenditures in connection with Opposer's Mark, for each year from the date of first use to the filing date of Applicant's Registration.
13. All documents and things that relate to any change in the type of goods or services provided under Opposer's Mark from the first use date to the present.
14. All documents and things relating to the types of customers that buy, receive, or use any of Opposer's goods and services.
15. All documents and things that relate to any consideration by Opposer as to whether Opposer's Mark should be modified, or whether the use of Opposer's Mark should be discontinued, reduced or expanded.
16. All documents and things that relate to any consideration by Opposer as to whether Opposer's goods and services should be modified.
17. All documents and things relating to any discontinuance of use of Opposer's Mark.
18. All documents and things that relate to any conflict between adoption or use of Opposer's Mark and the marks of any other persons.
19. All documents and things relating to any litigation, opposition, cancellation, or other dispute involving Opposer's Mark in the United States or any foreign country.
20. All documents and things that refer or relate to Applicant in Opposer's possession.
21. All documents and things reflecting any confusion between any of Opposer's Mark and Applicant's Mark.
22. All documents and things relating to any communications in which a third party believed that Opposer or any of Opposer's goods or services were in some way connected with Applicant or Applicant's goods or services.

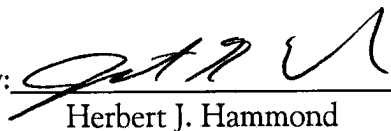
23. All documents and things relating to any mail, telephone calls, complaints, inquiries, or orders directed to Opposer regarding Applicant or goods, services, or business activities of Applicant.
24. All documents and things relating to any communications received by Opposer but intended for Applicant.
25. All documents and things relating to any communications in which the communicator believed that Applicant or Applicant's goods or services were in some way connected with Opposer or any of Opposer's goods and services.
26. All correspondence between Opposer and any third party concerning or mentioning Applicant.
27. All correspondence between Opposer and any third party concerning or mentioning Applicant's Mark.
28. All documents and things referred to, evidencing, or relating to Opposer's Answers to Interrogatories to the extent not already produced.
29. All documents and things upon which Opposer intends to rely or place in evidence during the testimony periods of this proceeding.
30. A sample, copy, photograph, illustration, sketch, or other depiction of each different logo type, design, font, or style in which Opposer's Mark or any variation thereof has been or is now being used by Opposer.
31. A sample, copy, or photograph of each different menu provided under Opposer's Mark from the time of first use to the present.
32. All documents and things evidencing the date of the first use of Opposer's Mark.

33. All documents and things evidencing the total amount of sales of services or goods sold by Opposer under Opposer's Mark in the United States from the date of first sale to the present.
34. All documents and things evidencing the trade area of Opposer's goods and services from the time of first use to the filing date of Applicant's Application.
35. All documents and things evidencing the area of geographic use of the Opposer's Mark from the time of first use to the filing date of Applicant's Application.
36. All documents and things referring or relating to Applicant's Mark.
37. All documents and things referring or relating to the corporate registration of Gullas Corporation in New Jersey.
38. All documents and things referring or relating to the corporate registration of Boi Na Brasa (or any variation thereof) in New Jersey.
39. All documents and things referring or relating to the corporate registration of Terra Sul Corporation in New Jersey.
40. All documents and things referring or relating to any corporate registration by Farid Saleh or on his behalf.
41. Representative samples of the [www.boinabrasa.com](http://www.boinabrasa.com) website from July 1, 1999 to the present.
42. All documents and things referring or relating to BOI NA BRAZA.
43. All documents and things that support the claim that "BOI NA BRAZA" translates into "Ox in Brazil" or "Brazilian Ox."
44. All documents and things that support the claim that Opposer's Mark BOI NA BRASA is translates into "Ox in embers."

45. All documents and things that support the claim that BOI NA BRAZA evidences a geographic commercial impression to a relevant consumer.
46. All documents and things that support your claims that BOI NA BRAZA so resembles Boi Na Brasa as to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trade Mark Act.
47. All documents and things that support your claims that BOI NA BRAZA is merely descriptive.
48. All documents and things that support your claims that BOI NA BRAZA is deceptively misdescriptive.
49. All documents and things that support your claims that Terra Sul will be damaged by the registration of the BOI NA BRAZA mark.
50. All documents and things that support your claims that BOI NA BRAZA is primarily geographically descriptive.
51. All documents and things that support your claims that BOI NA BRAZA is geographically deceptively misdescriptive.

Dated: November 15, 2011.

By:



Herbert J. Hammond  
Texas Bar No. 08858500

Justin S. Cohen  
Michigan Bar No. P70901

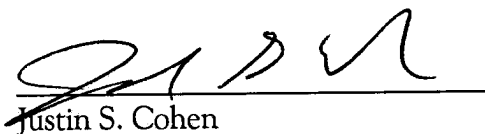
THOMPSON & KNIGHT L.L.P.  
1722 Routh Street  
Suite 1500  
Dallas, Texas 75201  
(214) 969-1700 (Telephone)  
(214) 969-1751 (Fax)

ATTORNEYS FOR APPLICANT  
BOI NA BRAZA, INC.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served on Opposer's counsel of record, Eamon J. Wall, by first class mail, postage prepaid, on this 15<sup>th</sup> day of November, 2011, in an envelope addressed to:

Mr. Eamon J. Wall  
Wall & Tong, LLP  
25 James Way  
Eatontown, New Jersey 07724

  
Justin S. Cohen

DALLAS 2794928.1

# EXHIBIT B



25 James Way  
Eatontown, NJ 07724  
Tel: (732) 542-2280  
Fax: (732) 542-2283  
www.walltong.com

VIA FACSIMILE 1-214-969-1751  
November 29, 2011

THOMPSON & KNIGHT LLP  
1722 Routh Street  
Suite 1500  
Dallas, TX 75201

Attention: Herbert J. Hammond, Esq.  
Justin S. Cohen, Esq.

Re: Opposition No. 91196845  
Terra Sul Corporation a/k/a Churrascaria Boi Na Brasa v.  
Boi Na Braza, Inc.

Gentlemen:

We note that you filed Applicant's Initial Disclosures on November 14, 2011 and Applicant's First Set of Discovery to Opposer on November 15, 2011 (the last day of the discovery period). Please be advised that we will not be responding to your discovery requests.

Opposer Terra Sul Corporation timely filed Initial Disclosures on May 16, 2011 as required under the TTAB Rules. Applicant Boi Na Braza, Inc. did not timely file Initial Disclosures. We are not requesting further discovery, since there is no need to do so. All pertinent documentary evidence was filed with the Board as part of record in Cancellation Proceeding 92047056. Terra Sul will file a Notice of Reliance on documentary evidence filed in the cancellation proceeding and suggests that Applicant do the same.

Very truly yours,

WALL & TONG, LLP

A handwritten signature in black ink, appearing to read 'E. Wall'.

Eamon J. Wall

EJW:lec



# EXHIBIT C

**Cohen, Justin**

---

**From:** Cohen, Justin  
**Sent:** Tuesday, November 29, 2011 2:14 PM  
**To:** 'Eamon Wall'  
**Cc:** Hammond, Herbert J.; Laura Crater; Stephenson, Louellen; 'docketing@walltong.com'  
**Subject:** Terra Sul Corp. v. Boi Na Braza - Discovery Responses (Opp. No. 91196845)  
**Follow Up Flag:** Follow up  
**Due By:** Friday, December 02, 2011 12:00 AM  
**Flag Status:** Red

Mr. Wall:

We received your fax and understand that opposer Terra Sul has refused to respond to our discovery requests because Boi Na Braza did not serve its initial disclosures by the Board's deadline. I note that your fax fails to state any statute, rule, or case law supporting your position.

We fail to see any basis for your client's refusal to participate in discovery in this proceeding. Although Boi Na Braza's initial disclosures were not served by the Board's deadline, Boi Na Braza's initial disclosures were served before serving our discovery requests, as required under 37 C.F.R. 120(a)(3). Further, had you been concerned about receiving our initial disclosures sooner, you could have simply contacted us or filed a motion to compel our initial disclosures. I also fail to see how your client could be prejudiced since the parties were recently engaged in a cancellation proceeding involving the BOI NA BRAZA mark.

Accordingly, we plan on filing a motion to compel discovery. We will also file a motion to suspend the proceeding pending the decision on our motion to compel. Please let us know if you oppose the motion to suspend.

We also did not receive a response to Mr. Hammond's email of Oct. 18 outlining a settlement framework. We assume that your client is not interested in discussing settlement. Please let us know if our assumption is incorrect.

Sincerely,

~Justin S. Cohen

**Justin S. Cohen**

Thompson & Knight LLP  
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Dallas, TX 75201  
214.969.1211 (office)  
214.999.1565 (fax)  
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[vCard](#) | [Bio](#) | [TK Website](#)

THIS MESSAGE IS INTENDED TO BE CONFIDENTIAL AND MAY CONTAIN PRIVILEGED ATTORNEY-CLIENT COMMUNICATIONS. IF YOU RECEIVED IT IN ERROR, PLEASE DELETE IT.

12/5/2011